IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

CWP.No.1129 of 2001.

Date of Decision :27TH August, 2007.

H.P.M.C. …Petitioner.

Versus:

B.L.Lakhanpal. …Respondent.

Coram:
The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1]

For the petitioner: Mr.B.S.Chauhan, Advocate.

For Respondent. Mr.N.K.Sharma, Advocate.

Sanjay Karol,J (Oral).

In the present petition, the award dated 18th June, 2001 passed by the H.P. Industrial Tribunal-cum-Labour Court, Shimla in Reference Case No.53 of 1996 has been assailed.

Necessary facts for adjudicating the present petition are as under:

Respondent was in employment with the petitioner firstly as a Casual Labourer w.e.f. June 1978 to August, 1980 and thereafter he was appointed afresh as a Helper and worked as such till he was promoted as a Lab. Assistant in the year 1982 up to 1987. W.E.F. 31st October, 1987, respondent was

---

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

duly promoted as Tester in pay scale of Rs.510-940.

Respondent raised a dispute which was referred to the Tribunal under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as `the Act) and numbered as Reference No. 53 of 1996 titled as B.L.Lakhanpal Vs. Managing Director, HPMC. Ltd. The respondent filed a petition claiming promotion as a Tester from the date of vacancy i.e. July, 1986 instead of 31st October, 1987. Respondent sought parity of pay scale Rs.570-1080 at par with the posts of Store Keeper, Cashier, Junior Accountant and Assistant on the basis that once all the posts including that of Tester were having uniform pay scales of Rs.160-400. The respondent has alleged notice due to his trade union activities.

The Tribunal, after considering the material on record came to the conclusion that the respondent having higher technical qualification was entitled to higher pay scale or at least in parity with the pay scales of Cashier, Store Keeper and Junior Accountant. The respondent was also held entitled for promotion w.e.f. July, 1986 instead of October, 1987.

Learned counsel appearing for the petitioner has assailed the award on the ground that when the Tribunal did not consider appropriate to determine the plea of discrimination and malafide therefore, there was no reason for Tribunal to have allowed the claim petition more particularly in view of the decisions rendered by the Court in *Union of India and others Vs.*

K.K.Vadera and other, AIR 1990 Supreme Court 442 and *Shiba Kumar Dutta and others Vs. Union of India and others* , (1997) 3 Supreme Court Cases 545.

Per contra, the learned counsel for the respondent has submitted that the cause of action for challenging the pay fixed for the post of Tester would have arisen only from the date of promotion. He has defended the award for the reasons assigned therein

I have given my thoughtful consideration to the issues raised as have also perused the material on record. In my view the finding returned by the Tribunal cannot be sustained for the simple reason that in *K.K.Vadera and others* (supra), it has been held that with the post falling vacant, promotion to that post has to be from the date of promotion and not from the date when the post fell vacant. That the respondent was victimized due to the trade union activities is not acceptable for the simple reason that the same was neither considered nor decided by the Tribunal . Except for this bald allegation that he is being discriminated for the reason that he is an activist of the trade union and is founder and General Secretary of the present Union, there is nothing on record to show or suggests that how, in what manner, by whom and when he was discriminated or victimized. In this view of the matter, the plea of malice cannot be accepted. For this reason, the finding returned by the Tribunal that the petitioner shall be

deemed to be promoted w.e.f. 26th July, 1986 i.e. the date when the post was fell vacant needs to be set aside.

Similarly with regard to parity of pay scale, it is important to notice that at one point in time, the pay scales of Tester, Junior Accountant, Cashier, Assistant and Store Keeper were similar i.e. Rs.160-400. However, the pay scales were subsequently revised on 24th December, 1981 and the pay scale of Tester was revised w.e.f. 1st January, 1978 to Rs.510-940 whereas the pay scales of other categories were revised from Rs. 160-400 to Rs. 570-1080. Importantly, at the time when the pay scale was revised, respondent was not even born in the cadre. In fact, he was appointed as a Helper in the year 1980 i.e. just before the pay scale was revised. It is not the case of the respondent that his pay scale in particular cadre has been reduced to his dis-advantage after his promotion to the same.

In *Shiba Kumar Dutta* (supra), the court held that nomenclature and fitment is one of executive policy of the Government. Unless the action is arbitrary or there is invidious discrimination between persons similarly situated, doing same type of work, it would be difficult for the courts to go into the question of equation of posts or fitment into a particular scale of pay which is to be decided by the Expert Committee and the Court cannot consider and evaluate the job criteria and scales of pay prescribed for each category.

For all the aforesaid reasons, in my view, there is error apparent on the face of the record and the award needs to be set aside keeping in view the facts as also the ratio of law laid down by the apex Court. Ordered accordingly. No costs.

(**Sanjay Karol),**
Judge.

August 27, 2007(R)